

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: FIVE STAR AUTO SALVAGE, INC.

FILE NO.: OCI-HW-17-52

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 16 November 2017, the DEM issued an Expedited Citation Notice (“ECN”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The ECN required specific actions to return to compliance and payment of an administrative penalty. On 20 November 2017, the ECN was delivered to Respondent. Respondent failed to respond to or comply with the ECN, and on or about 20 January 2018 the ECN expired.

C. Facts

- (1) The property is located at 1348 Douglas Pike in the Town of Smithfield, Rhode Island (the “Property”). The Property includes a facility used for the general maintenance of automobiles and an auto salvage yard (the “Facility”).
- (2) Respondent is a small quantity handler of universal waste and a used oil generator at the Facility.
- (3) On 18 May 2017, the DEM inspected the Property. The inspection revealed the following:
 - (a) One 250-gallon aboveground storage tank (“AST”) holding used oil located in Bay #1 of the Facility that was not labeled with the words “Used Oil”;
 - (b) Several containers of various capacities holding used oil that were stored in the auto salvage yard in a box truck were not labeled with the words “Used Oil” and several devices holding used oil that did not meet the definition of a container; and

- (c) One 5-gallon container holding universal waste mercury switches that was stored in the Facility office that was dated 13 October 2014.
- (4) During the inspection Robin Perez, who identified himself as the owner, stated on occasion there are spills of used oil that have not been reported to the DEM.
- (5) As of the date of the NOV, Respondent has failed to address the instances of noncompliance in Section C (3) and C (4) above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's Hazardous Waste Regulations 15.4A.3 (recently amended to Part 1.16.4.A.1.c)** – requiring that used oil generators label all containers holding used oil with the words “used oil”.
- (2) **DEM's Hazardous Waste Regulations 15.4 (recently amended to Part 1.16.4.A)** – requiring used oil generators to only store used oil in containers, ASTs or underground storage tanks.
- (3) **DEM's Hazardous Waste Regulations 15.4B2 (recently amended to Part 1.16.4.A.2.b)** – requiring used oil generators that store used oil in an AST to label the tank with the words “used oil”.
- (4) **DEM's Hazardous Waste Regulations 13.5 and 40 CFR 273.15 (recently amended to Part 1.14.5)** – requiring small quantity handlers of universal waste to ship all universal waste that has been accumulated onsite for greater than 1 year to a destination facility.
- (5) **DEM's Hazardous Waste Regulations 15.4D (recently amended to Part 1.16.4.A.4)** – requiring that used oil generators notify the DEM of any spills or releases of oil that present a risk of injury to human health or the environment.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to **within 30 days of receipt of the NOV**:

- (1) Label the AST and all containers holding used oil with the words “used oil”;
- (2) Transfer all used oil stored in devices that do not meet the definition of a container into containers that are designed for the storage and transportation of used oil or place the used oil into the AST;

- (3) Ship all universal waste mercury switches to an authorized destination facility and within 10 days of the shipment submit a copy of the bill of lading documenting the shipment to the DEM's Office of Compliance and Inspection; and
- (4) Notify the DEM's Office of Emergency Response IMMEDIATELY of a spill or release of used oil or any other hazardous waste or material at (401) 222-1360 during business hours or (401) 222-3070 after hours.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$12,500

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);

- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7B of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

FIVE STAR AUTO SALVAGE, INC.
c/o Peter Petrarca, Esq., Registered Agent
330 Silver Spring Street
Providence, RI 02904

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: OCI-HW-17-52
 Respondent: FIVE STAR AUTO SALVAGE, INC.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) - Used Oil Container Labeling	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1	\$2,500
D (2) - Used Oil Storage	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1	\$2,500
D (3) - Used Oil Tank Labeling	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1	\$2,500
D (4) - Universal Waste Accumulation	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1	\$2,500
D (5) - Spill Release Notification	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1	\$2,500
SUB-TOTAL					\$12,500

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Used Oil Container Labeling
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE III INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10.A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to label containers holding used oil. The requirement to label containers holding used oil is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of waste. Proper labeling provides valuable information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: At the time of the inspection the DEM inspector observed several containers holding used oil that were not labeled as required by regulation. (4) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens. (5) Duration of the violation: Unknown. The DEM first discovered the violation on 18 May 2017. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by failing to properly label the containers holding used oil. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance despite receiving the ECN that required it to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent previously failed to comply with the DEM's Hazardous Waste Regulations for improper labeling in a Letter of Non-Compliance dated 16 July 2014.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Used Oil Storage

VIOLATION NO.: D (2)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10.A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent stored used oil in several devices (drip pans) that do not meet the definition of a container or a tank. The requirement to store used oil in containers or tanks is an integral part of the regulatory program because this requirement reduces the potential of the occurrence of spills or releases of used oil. Containers and tanks may be secured with a cover or lid thus preventing accidental spills or releases of waste. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: At the time of the inspection the DEM inspector observed several drip pans holding used oil that do not meet the definition of a container. (4) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens. (5) Duration of the violation: Unknown. The DEM first discovered the violation on 18 May 2017. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by failing to properly store used oil. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance despite receiving the ECN that required it to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent previously failed to comply with the DEM's Hazardous Waste Regulations regarding used oil storage in a Letter of Non-Compliance dated 16 July 2014.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Used Oil Tank Labeling

VIOLATION NO.: D (3)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10.A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to label an aboveground storage tank holding used oil. The requirement to label tanks holding used oil is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of waste. Proper labeling provides valuable information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: One 250-gallon aboveground tank holding used oil. (4) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens. (5) Duration of the violation: Unknown. The DEM first discovered the violation on 18 May 2017. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by failing to label the tank holding used oil. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance despite receiving the ECN that required it to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Respondent previously failed to comply with the DEM's Hazardous Waste Regulations regarding improper labeling in a Letter of Non-Compliance dated 16 July 2014.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Universal Waste Accumulation

VIOLATION NO.: D (4)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10.A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent stored a container holding universal waste onsite for greater than one year. The DEM's Hazardous Waste Regulations allow a handler of universal waste to accumulate the waste onsite for a period not to exceed one year without obtaining a storage permit. Respondent did not obtain a permit to store universal waste from the DEM prior to storing it onsite for greater than one year. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: One 5-gallon container. (4) Toxicity or nature of the pollutant: The universal waste contained mercury which is known to cause damage to the respiratory and nervous systems. (5) Duration of the violation: Full duration unknown – at least 18 months. The universal waste container was dated 13 October 2014 and DEM first discovered the violation on 18 May 2017. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by failing to ship the universal waste to a licensed disposal facility within the one-year accumulation limit. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance despite receiving the ECN that required it to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Used Oil Spill Reporting

VIOLATION NO.: D (5)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10.A.1.b of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent informed the DEM inspector that it had failed to report spills of used oil at the facility. State regulations prohibit the disposal of used oil to the land and require generators to report all used oil spills to the DEM. Disposal of used oil at an unlicensed facility may result in contamination of soil, surface and groundwater. (2) Environmental conditions: According to Respondent used oil was released onto the ground surface at the facility. (3) Amount of the pollutant: As a result of Respondent's failure to report spills the amount of released pollutant is unknown. (4) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens. (5) Duration of the violation: Unknown. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance by failing to properly report used oil spills. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance despite receiving the ECN that required it to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<input type="checkbox"/> MAJOR	<input type="checkbox"/> MODERATE	<input checked="" type="checkbox"/> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250